

## PUBLIC PARTICIPATION GUIDELINES

**4VAC25-10-10. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Department" means the Department of Mines, Minerals and Energy ~~as distinguished from the director, who is authorized to promulgate regulations.~~

"Director" means the Director of the Department of Mines, Minerals and Energy.

~~"Promulgating authority" means the individual or body authorized by law to initiate and carry out the process of adopting regulations.~~

**4VAC25-10-20. Purpose and authority.**

A. These guidelines are designed to ~~allow~~ facilitate participation by the public in the formulation of regulations that are written to carry out the legislative mandates of the Virginia Department of Mines, Minerals and Energy, ~~of~~ the Virginia Gas and Oil

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Board, the Board of Mineral Mining Examiners, and ~~of~~ the Board of Coal Mining Examiners. Although required by law, these rulemaking procedures also reflect the department's commitment to an open forum for all points of view, and to a thorough analysis of many possible courses of action in regulatory development. These guidelines actually are true regulations themselves, as required by ~~§9-6.14:7.1~~ 2.2-4007 of the Code of Virginia. They have been adopted under the rulemaking authority of the director, the Virginia Gas and Oil Board, the Board of Mineral Mining Examiners, and the Board of Coal Mining Examiners, as prescribed in Title 45.1 of the Code of Virginia, and are subject to the same provisions of the Virginia Administrative Process Act (APA) as are all regulations. The Public Participation Guidelines apply to all actions to promulgate, amend or repeal any regulations except emergency regulations, which are covered by separate provisions, ~~and~~ certain exempt activities specified in ~~Article~~ Articles 1 and 2 of the APA (~~§§9-6.14:4.1~~ 2.2-4000 et.seq. of the Code of Virginia), and promulgation of regulations under the fast-track rulemaking process specified in § 2.2-4012.1 of the APA.

B. Depending on the nature of the regulation, the Director of the Department, the Chief of the Division of Mines, the Virginia Gas and Oil Board, ~~The~~ the Board of Mineral Mining Examiners or the Board of Coal Mining Examiners may be authorized to promulgate regulations.

**4VAC25-10-30. Initiating the rulemaking process.**

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A. The ~~promulgating authority~~ director, chief, or board may initiate rulemaking at any time. However, he shall do so according to the provisions of these regulations, applicable executive orders, and the Administrative Process Act, the Virginia Register Act, and the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

B. The ~~promulgating authority~~ director, chief, or board shall consider all written requests for regulatory change. Any individual or group may petition the ~~promulgating authority~~ director, chief, or board to promulgate, amend or repeal any regulation. The ~~promulgating authority~~ director, chief, or board shall consider all petitions and other written requests, but after careful consideration, may choose not to initiate rulemaking. To be considered, a petition shall contain:

1. The name, address and telephone number of the petitioner.
2. The new regulation, amendment or repeal action proposed by the petitioner.
3. The reasons for requesting the rulemaking.
4. The anticipated effects of making the requested regulatory changes, including costs to various parties.
5. The anticipated effects of not making the requested regulatory changes.

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The ~~promulgating authority~~ director, chief, or board shall receive, consider, and respond to the petition ~~within 180 days~~ in accordance with the provisions of § 2.2-4007.

C. The ~~promulgating authority~~ director, chief, or board recommends that all petitioners include documentation to support their requests for rulemaking.

**4VAC25-10-40. Identifying interested parties.**

The department shall maintain ~~a~~ current regulatory mailing ~~list~~ lists composed of the names and addresses of parties who have expressed an interest in commenting on regulatory actions proposed by the ~~promulgating authority~~ director, chief, or board . The department may also maintain listings of e-mail addresses of interested parties. The department may periodically request those persons on a regulatory mailing list to indicate whether they wish to continue to be notified electronically or by regular mail, or be deleted from the list. When an e-mail notification is returned as undeliverable over more than one day, that person or organization will be deleted from the list. When regular mail is returned as undeliverable, that individual or organization will be deleted from the list. Parties may also sign up for the Commonwealth's Regulatory Town Hall Website (<http://www.townhall.state.va.us> ) to receive electronic notices of regulatory actions.

**4VAC25-10-50. Notifying interested parties.**

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Whenever the ~~promulgating authority~~ department intends to consider a regulatory change, he shall notify interested parties, either electronically or in writing, of the intention to make such regulatory changes, using the following procedures:

1. The ~~promulgating authority~~ department shall compose a Notice of Intended Regulatory Action ~~in the format prescribed by the Registrar of Regulations~~, and a media release containing the information in the notice. Both documents shall specify a deadline for submitting written comments regarding the intended regulatory action. If the ~~promulgating authority~~ director, chief, or board decides to conduct a public meeting, then the notice and the media release shall specify the date, time and location of that public meeting.
2. The ~~promulgating authority~~ director, chief, or board shall submit the Notice of Intended Regulatory Action to the Registrar of Regulations to be published in the Virginia Register on a date not less than 30 days prior to the end of the comment period.
3. The department shall post the Notice of Intended Regulatory Action on the Commonwealth's Regulatory Town Hall Website.

~~3.~~ 4. Not less than 30 days prior to the end of the comment period, the ~~promulgating authority~~ department shall:

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a. Deliver a copy of the Notice of Intended Regulatory Action to all parties on the regulatory mailing list who have expressed an interest in the type of regulations being considered;

b. Deliver a copy of the media release to at least one general circulation newspaper published in ~~the state capital, to at least one general circulation newspaper published in~~ any area that is particularly affected by the regulation ~~to the exclusion of other geographical areas,~~ and to any other news media the ~~promulgating authority~~ director, chief, or board deems appropriate based on the subject matter of the regulation. These additional news media may include daily, semi-weekly, or weekly newspapers in areas particularly affected by the proposed regulatory action.

**4VAC25-10-60. ~~Drafting regulatory changes~~ Regulatory work committees.**

Whenever the ~~promulgating authority~~ director, chief or board initiates rulemaking, he shall solicit public participation in the development of regulations. The ~~promulgating authority~~ director, chief, or board may form a work committee to consider regulatory issues and advise the ~~promulgating authority~~ director, chief or board and staff. Any work committee so formed may consist of (i) parties invited by the director, chief, or board and who have agreed to serve on committees to develop regulations of the type being considered; or (ii) in cases where the ~~promulgating authority~~ the director, chief or board determines the proposed action does not warrant formation of a new committee, a

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statutorily created committee or advisory board of the department. In such cases, the ~~promulgating authority~~ department shall determine that the committee or board chosen has the expertise to review the type of regulation being considered. The Virginia Coal Mine Safety Board shall be the work committee for coal mine safety regulations under the conditions prescribed in ~~§95.1-161.100~~ 45.1-161.100 of the Code of Virginia.

**4VAC25-10-70. Formal review.**

A. After consideration of comments received from the public, the department shall prepare a ~~final~~ draft of the proposed regulatory changes and submit this draft to the ~~department~~ director, chief, or board for review.

B. In accordance with the provisions of the Administrative Process Act, applicable executive orders, the Virginia Register Act, and Regulations of the Virginia Code Commission for Implementing the Virginia Register Act, the director, chief, or board shall submit the proposed regulation to, at a minimum, a 60-day public comment period by forwarding the appropriate documents to the Registrar of Regulations and the Commonwealth's Regulatory Town Hall Website ( <http://www.townhall.state.va.us> ).  
The director, chief, or board will hold a public hearing during the public comment period.

~~B. When the promulgating authority decides to proceed with rulemaking, he shall submit the proposed regulation to a comment period of at least 60 days, according to the provisions of the Virginia Administrative Process Act and the Virginia Register Act.~~

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~~1. The department shall forward to the Registrar of Regulations a notice of the comment period and public hearing. The notice shall state the legal authority for the promulgating authority to act; the deadline for comments on the proposed regulation; the date, time and location of the public hearing; and the name, address and telephone number of a person to contact for further information about the proposed regulation. The department shall include with the notice the full text of the proposed regulation, statements of the basis, purpose, substance, issues and impact of the proposed regulation, and a summary of the regulation.~~

2. C. The department director, chief, or board shall send a copy or summary notice of the proposed regulation to all parties on the regulatory mailing list who have expressed an interest in the type of regulation being considered, and to all others who have commented on the proposed regulatory changes. This draft notice shall be accompanied by a letter explaining explain the deadlines and procedures for submitting formal public comments under the Administrative Process Act and from where the public can obtain copies of the materials.

D. Ex parte communications outside of the time periods provided for public comment will not be accepted by the department. However, the department may request clarification of comments it received during the public comment periods.

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~~3. The department shall request the Registrar of Regulations to publish the public hearing notice in The Virginia Register, in a Richmond area newspaper, in at least one general circulation newspaper published in any area that is particularly affected by the regulation to the exclusion of other geographical areas, and in other newspapers as requested by the department, at least 60 days before the end of the comment period.~~

~~4. A draft of the department's summary description of public comment shall be sent by the department to all public commenters on the proposed regulation at least five days before the final adoption of the regulation.~~

~~5. During the final comment period, the proposed regulations shall be submitted for review concurrently by the public, the Governor, the General Assembly, the Department of Planning and Budget, and the Secretary of Commerce and Trade.~~

**4VAC25-10-80. Adoption.**

Upon expiration of the public comment period, the ~~promulgating authority~~ director, chief, or board shall carry out the remaining steps to adopt the regulations according to the provisions of the Administrative Process Act, applicable executive orders, the Virginia Register Act, and Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

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